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July 31, 2007

**VIA FAX**

Honorable Richard J. Holwell  
United States District Judge  
United States District Court  
Southern District of New York  
500 Pearl Street  
New York, New York 10007

USDC SDNY  
DOCUMENT  
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Re: Carroll v. Pacheco, et al., 07-CV-3765


Dear Judge Holwell:

I represent the defendants in the above-referenced action and in accordance with Your Honor's local rule 3(A), I am writing to request a pre-motion conference as defendants intend to file a motion to dismiss in lieu of an answer; defendants' motion is presently due on August 10, 2007.

The sole claim in plaintiff's *pro se* complaint is a use of force claim; specifically that two corrections officers at Sing Sing Correctional Facility assaulted plaintiff. I intend to move to dismiss for failure to exhaust administrative remedies pursuant to 42 U.S.C. § 1997e(a). "Failure to exhaust is an absolute bar to an inmate's action in federal court: '[section] 1997e(a) requires exhaustion of available administrative remedies before inmate-plaintiffs may bring their federal claims to court at all.'" George v. Morrison, 2007 U.S. Dist. LEXIS 42640, \*9 at \*10 (S.D.N.Y. 2007) (dismissing inmate plaintiff's § 1983 claims for failure to exhaust) (*quoting Neal v. Goord*, 267 F.3d 116, 122 (2d Cir. 2001) (emphasis in original)). "Because the plain language of section 1997e(a) states 'no action shall be brought,' an inmate must have exhausted his claims at the time of the initial filing, given that '[s]ubsequent exhaustion after suit is filed...is insufficient.'" George, 2007 U.S. Dist. LEXIS 42640 at \*10. In this case, the plaintiff did not wait until his administrative remedies were exhausted before bringing this action thus necessitating a dismissal pursuant to 42 U.S.C. § 1997e(a).

Wherefore a pre-motion conference with the Court is respectfully requested in order that I may file a motion to dismiss in this case. To the extent that the Court will permit a motion without such a conference, defendants respectfully request that August 10, 2007 be the date of service of the motion to dismiss.

Respectfully submitted,



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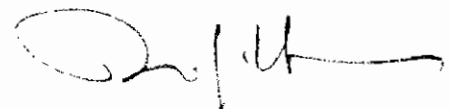
cc: **VIA FAX**  
Honorable Andrew J. Peck  
United States Magistrate Judge  
United States District Court  
Southern District of New York  
500 Pearl Street  
New York, New York 10007

**VIA FIRST CLASS MAIL**  
Kevin Carroll, 06A3682  
Sing Sing Correctional Facility  
354 Hunter Street  
Ossining, New York 10562

*Application Granted*

*A pre-motion conference shall not be required. Defendants shall file their motion by August 31, 2007. Plaintiff shall respond by September 28, 2007. Any reply shall be filed by October 12, 2007.*

*SO ORDERED*



*USDT  
8/8/07*